

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of SUTHERLAND/ANDERSON  
Minors.

UNPUBLISHED

March 18, 2014

No. 317446

Wayne Circuit Court

Family Division

LC No. 11-501883-NA

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Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Respondent C. Johnson appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (c)(ii). We affirm.

In July 2011, the Department of Human Services (DHS) filed a petition requesting that the trial court exercise jurisdiction over respondent's three minor children and terminate respondent's parental rights at the initial dispositional hearing. The petition included allegations of domestic violence, including an incident in which respondent was armed with a knife during an altercation with her husband, and an incident in which respondent broke a window at the home to gain entry after her husband locked her out. The petition also contained additional allegations about unsafe and unsanitary conditions in the house, respondent's need for mental health treatment, and respondent's abuse of alcohol. Following a trial on the petition, the trial court found that it had jurisdiction over the children and that statutory grounds for termination had been established, but concluded that termination of respondent's parental rights was not in the children's best interests. Accordingly, respondent was given an opportunity to be reunified with her children by participating in services under a case service plan.

In December 2012, the trial court authorized petitioner to file a petition to terminate respondent's parental rights due to her lack of progress with her treatment plan. Following a termination hearing that concluded in June 2013, the trial court issued its order terminating respondent's parental rights.

Respondent now argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence, and in finding that termination of her parental rights was in the children's best interests. We disagree.

A petitioner is required to establish a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory

ground for termination has been proven, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991). Once a statutory ground for termination has been established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's best interests decision is also reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

## I. STATUTORY GROUNDS

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (ii), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The trial court's decision was primarily based on respondent's failure to address the requirements of her parent-agency agreement. A parent's failure to comply with a parent-agency agreement is evidence of the parent's failure to provide proper care and custody of the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Conversely, a parent's compliance with a parent-agency agreement is evidence of her ability to provide proper care and custody. *Id.* The record does not support respondent's argument that she made substantial progress on her treatment plan. Respondent's involvement in incidents of domestic violence were a primary reason for the children's removal. Although respondent completed a domestic violence program and apparently had not had contact with her husband, she did not follow through with counseling to address her mental health, she denied needing any mental health treatment despite having been diagnosed with depression, and she refused to take her prescribed medication.

Related to respondent's failure to complete counseling was her denial of any substance abuse problem, although she admitted that she had been drinking at the time of one of the domestic violence incidents and that she had a low tolerance for alcohol. And despite her

insistence that she was not using drugs, she submitted a positive drug test for opiates and she refused to consistently appear for drug testing even though she was told that she could obtain unsupervised visits with her children if she successfully completed five consecutive negative drug tests. It is apparent that both psychological and substance abuse counseling were necessary to enable respondent to regain custody of her children. Respondent failed to successfully complete either of these components of her treatment plan. Respondent also failed to obtain stable housing and a suitable income. During the proceedings, she resided with various friends and family members. Although services were offered to assist respondent with housing, she was resistant to those services.

Respondent did complete a parenting course and she acted appropriately during visits with the children. However, respondent failed to take advantage of an opportunity to visit her children twice a week. Although respondent claimed that she decided to visit only once a week so that she could focus on her treatment plan, the evidence established that respondent frequently missed appointments, refused to participate in counseling, and did not regularly appear for drug testing.

At the termination hearing, respondent asked the court to provide her with additional time to work on her parent-agency agreement. However, she had already been given approximately two years to participate in services. It was apparent that respondent was afforded a reasonable opportunity to address the issues that led to the children's removal and to demonstrate that she was capable of providing proper care and custody. Her lack of progress over that time period, her resistance to accepting help from service providers, and her refusal to fully participate in services was evidence that the conditions that led to the children's removal were not reasonably likely to be rectified within a reasonable time, considering the children's ages. The trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence.

The trial court also found that § 19b(3)(c)(ii) supported termination of respondent's parental rights. That subsection is directed at a respondent's failure to rectify additional conditions that arise after the trial court has assumed jurisdiction over the children. The trial court did not specify the additional conditions that supported termination under § 19b(3)(c)(ii). Respondent's lack of stable housing and a suitable income appear to be factors that support the application of this statutory ground. Regardless, because termination was justified under § 19b(3)(c)(i) and only one statutory ground for termination is necessary, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), any error in relying on § 19b(3)(c)(ii) as an additional ground to terminate respondent's parental rights is harmless.

## II. BEST INTERESTS

In deciding whether termination of parental rights is in a child's best interests, a court may consider the child's bond to the parent, the parent's parenting abilities, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The court may also consider the advantages of an alternative home for the child in its evaluation of the child's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

Although respondent had a bond with the children and they were happy to see her at visits, the evidence also established that the children were doing well in their foster home placements. While respondent asserts that the children would suffer considerable psychological damage if her parental rights are terminated, no such evidence was offered to support that claim. Any loss the children might suffer appears to be outweighed by the progress they have made in foster care, where their needs are being met. Both boys were expected to be adopted by their foster family and an adoptive family had already been located for the young girl. Despite respondent's bond to the children, it was clear that she was not able to safely care for the children or provide for their basic needs. Any bond respondent had with the children did not outweigh their needs for a safe and stable home. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Deborah A. Servitto

/s/ David H. Sawyer

/s/ Mark T. Boonstra